

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: Eugene J. Karmelek

Petition No. 981124-018-001

MEMORANDUM OF DECISION

Procedural Background

On July 27, 1999, the Department of Public Health (“the Department”) issued a Statement of Charges (“the Charges”) against Eugene J. Karmelek (“respondent”), who is licensed as a speech pathologist. H.O. Exh. 1. The Charges allege that respondent’s speech pathology license is subject to disciplinary action pursuant to §§19a-17 and 20-414 of the Connecticut General Statutes,¹ as more particularly set forth below.

Pursuant to §19a-14(c), the Department is authorized to assume all powers and duties normally vested with a board in administering regulatory jurisdiction over professions that do not have corresponding boards. Also pursuant to said section, there is no board for speech pathologists. Thus, on August 5, 1999, the Commissioner of the Department appointed this Hearing Officer to hear this case and to determine findings of fact and conclusions of law, and to issue an Order. H.O. Exh. 2.

A hearing in this matter was scheduled and held on September 14, 1999. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes (the Uniform Administrative Procedures Act) and the Regulations of Connecticut State Agencies, §19a-9-1, *et seq.* Respondent appeared *pro se*; the Department was represented by Staff Attorney Stephen Miltimore. Respondent did not file an Answer, but answered on the record at the hearing.

The Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer’s findings of fact, conclusions of law, and order.

¹ Unless otherwise stated, all section references herein are to the Connecticut General Statutes.

Allegations and Answer

1. In ¶1 of the Charges, the Department alleges that at all relevant times, respondent was licensed as a speech pathologist in the State of Connecticut, holding license no. 001709. Respondent admits this allegation. Tr. p. 9.
2. In ¶2 of the Charges, the Department alleges that from approximately 1987 to 1993, respondent was employed as a speech pathologist by Executive Management Associates, Inc. ("EMA"), a mental health care services management company located in Springfield, Massachusetts and later in Ludlow, Massachusetts. Respondent admits this allegation in part and denies it in part; respondent admits the allegations, except that he affirmatively states that he was not employed directly by EMA, but was employed by various entities managed by EMA. Tr. p. 10.
3. In ¶3 of the Charges, the Department alleges that from approximately 1987 to 1993, respondent was president of the Board of Directors of the Center for Humanistic Change of Massachusetts ("CHC"), a mental health services company located in Springfield, Massachusetts. Respondent admits this allegation. Tr. p. 11.
4. In ¶4 of the Charges, the Department alleges that on January 15, 1998, as a result of conduct related to his employment with EMA and his presidency of CHC, respondent was convicted in United States District Court for the District of Massachusetts of one count of conspiracy to commit mail fraud and two counts of mail fraud and aiding and abetting, both in violation of 18 U.S.C. §1341. Respondent admits this allegation. Tr. p. 11.
5. In ¶5 of the Charges, the Department alleges that on August 28, 1998, based on the conviction referred to in ¶4, the Massachusetts Board of Registration of Speech Pathology and Audiology revoked respondent's license to practice speech pathology in that state. Respondent admits this allegation. Tr. p. 12.

Findings of Fact

1. At all relevant times, respondent was licensed as a speech pathologist in the State of Connecticut and held license no. 001709. Tr. p. 9; Dept. Exh. 4.
2. From approximately 1987 to 1993, respondent was employed as a speech pathologist by various entities managed by EMA, a mental health care services management company located in Springfield, Massachusetts and later in Ludlow, Massachusetts. Tr. p. 10.

3. From approximately 1987 to 1993, respondent was president of the Board of Directors of the CHC, a mental health services company located in Springfield, Massachusetts. Tr. p. 11.
4. On January 29, 1998, respondent pleaded guilty to one count of conspiracy to commit mail fraud, one count of mail fraud, and one count of aiding and abetting in violation of 18 U.S.C. §1341. This plea resulted from respondent's conduct in conjunction with his employment activities with entities managed by EMA and his presidency of CHC. Tr. p. 11; Dept. Exh. 1 and 2.
5. As a result of this conviction, respondent was committed to the custody of the United States Bureau of Prisons to serve a ninety day sentence at the Community Treatment Center at Ludlow, Massachusetts beginning February 17, 1998. Upon his release, respondent was placed under supervised release for two years and was further required to perform 200 hours of volunteer service as directed by the probation department and to pay restitution in the amount of \$176,348 out of a total loss of \$3,526,966. Dept. Exh. 2 and 3.
6. On August 28, 1998, based on the conviction referred to in FF 4, the Massachusetts Board of Registration of Speech Pathology and Audiology revoked respondent's license to practice speech pathology in that state. Tr. p. 12; Dept. Exh. 3.
7. After the federal investigation was initiated, respondent was fully cooperative with the investigation. Tr. p. 13-14, 29.
8. For a period of approximately four years, from 1988 through 1991, respondent was aware of and participated in the criminal activities that resulted in his conviction, and took no action to stop the fraudulent activities. Tr. p. 26-27, 30, 32, 51-52.
9. Respondent was found to be responsible for 5% of the wrongdoing that resulted in the convictions. Tr. p. 25-26, 34-36; Dept. Exh. 2; Rt. Exh. 3.
10. Respondent has completed his community service requirement and has remained current in making restitution at a rate of \$100 per month. Tr. p. 34.
11. Respondent is remorseful for his conduct. Tr. p. 13.
12. The Department became aware of respondent's criminal record when he self-reported his conviction on his renewal form. Tr. p. 28.
13. Respondent has not billed for his services since 1994; he is currently paid an hourly wage by his employer. Tr. p. 54-55.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Comm.*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 9333 (1981); *Swiller v. Commissioner of Public Health*, CV 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

Since there is no board having jurisdiction over the practice of speech pathology, this Hearing Officer may order the relief authorized in §19a-17. *See*, §19a-14(c).

The Department sustained its burden of proof with regard to all of the allegations in the Charges. Indeed, respondent does not dispute the allegations in any significant respect. Thus, respondent's license is subject to discipline pursuant to (1) §20-414(a)(1), in that he engaged in "fraud or material deception in the course of professional services or activities;" (2) §20-414(a)(3), in that he violated §20-404, which provides that a criminal conviction shall be grounds for disciplinary action; and, (3) §20-414(a)(6), in that he engaged in "illegal, . . . conduct in his practice."

In considering the remedy in this matter, the Hearing Officer is mindful that the last criminal act performed by respondent occurred eight years ago. In the meantime, respondent cooperated fully with the federal investigators, served a ninety day prison sentence, completed his community service, and is making restitution. The evidence further establishes that respondent was the least culpable of the wrongdoers. The federal authorities assigned him only a 5% responsibility for the overall fraudulent scheme; he was not the initiator of the criminal activity. Rather, he seemed to be somewhat naive and easily manipulated. He also expressed much remorse for his conduct.

Taking into consideration all of these factors, as well as the Hearing Officer's concerns over the ease with which respondent was manipulated, the Hearing Officer hereby issues the following Order:

Order

Based on the record in this case, the above findings of fact and conclusions of law, the following discipline is hereby ordered with regard to speech pathology license no. 001709, held by Eugene J. Karmelek:

1. Respondent's license shall be suspended for a period of two years with said suspension immediately stayed.
2. Concurrently, respondent's license shall be placed on probation for a period of five years under the following terms and conditions:
 - a. Respondent shall only be employed in an office and practice setting where he has an employer who pays him for his services.
 - b. Respondent shall not bill clients or their insurers directly for his services.
 - c. Respondent shall provide his employer at each place where respondent is employed throughout the probationary period, with a copy of this Decision within fifteen days of its effective date, or within fifteen days of commencement of employment at a new practice. Respondent agrees to provide reports from each such employer every third month throughout the probationary period, stating that respondent is practicing with reasonable skill and safety and is, to the best of his employer's knowledge, in compliance with this Decision.
 - d. Respondent shall obtain written approval from the Department for his current employment and prior to any change in employment.
 - e. Respondent shall immediately notify the Department if he fails to be in compliance with the Order issued in conjunction with his criminal conviction.
3. All correspondence and reports shall be addressed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, CT 06134-0308

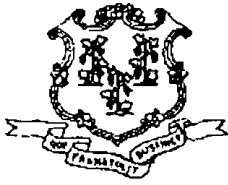
4. All reports required by the terms of this Decision shall be due on the tenth business day of each third month commencing on the third complete month after the effective date of this Decision.
5. Respondent shall bear all costs associate with compliance with this Decision.
6. In the event respondent is not employed as a speech pathologist for periods of thirty consecutive days or longer, or is employed as a speech pathologist for less than twenty hours per week, or is employed outside the State of Connecticut, respondent shall notify the Department in writing. Such periods of time shall not be counted towards reducing the probationary period covered by the Decision.
7. This Decision is effective thirty days after its issuance.



Donna Brewer, Esq.
Hearing Officer

Nov 2, 1999

Date



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

December 14, 2004

Eugene Karnelek, Speech Pathologist
17 Sherwood Drive
Belchertown, MA 01007-9541

Re: Memorandum of Decision
Petition No. 981124-018-001
License No. 001709
D.O.B. [REDACTED]

Dear Mr. Karnelek:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective December 2, 2004.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from your license related to the above-referenced Memorandum of Decision.

Please be certain to retain this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during this process.

Respectfully,

A handwritten signature in cursive script, appearing to read "Olive Tronchin".

Olive Tronchin
Division of Health Systems Regulation

cc: J. Fillippone
J. Wojick



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